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DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2011-0108]

RIN 1601-ZA11

**Identification of Foreign Countries Whose Nationals Are Eligible
to Participate in the H-2A and H-2B Nonimmigrant Worker Programs**

AGENCY: Office of the Secretary, DHS.

ACTION: Notice.

SUMMARY: Under Department of Homeland Security (DHS) regulations, U.S. Citizenship and Immigration Services (USCIS) may approve petitions for H-2A and H-2B nonimmigrant status only for nationals of countries that the Secretary of Homeland Security, with the concurrence of the Secretary of State, has designated by notice published in the **Federal Register**. That notice must be renewed each year. This notice announces that the Secretary of Homeland Security, in consultation with the Secretary of State, is identifying 58 countries whose nationals are eligible to participate in the H-2A and H-2B programs for the coming year. New countries on this year's list include Haiti, Iceland, Montenegro, Spain, and Switzerland.

DATES: *Effective Date:* This notice is effective January 18, 2012, and shall be without effect at the end of one year after January 18, 2012.

FOR FURTHER INFORMATION CONTACT: Francis Cissna, Office of Policy, Department of Homeland Security, Washington, DC 20528, (202) 447-3835.

SUPPLEMENTARY INFORMATION:

BACKGROUND: USCIS generally may approve H-2A and H-2B petitions only for nationals of countries that the Secretary of Homeland Security, with the concurrence of the Secretary of

State, has designated as participating countries. Such designation must be published as a notice

in the **Federal Register** and expires after one year. USCIS may, however, allow a national from a country not on the list to be named as a beneficiary of an H-2A or H-2B petition based on a determination that such participation is in the U.S. interest. See 8 CFR 214.2(h)(5)(i)(F) and 8 CFR 214.2(h)(6)(i)(E).

In designating countries to include on the list, the Secretary of Homeland Security, with the concurrence of the Secretary of State, will take into account factors including, but not limited to: (1) the country's cooperation with respect to issuance of travel documents for citizens, subjects, nationals, and residents of that country who are subject to a final order of removal; (2) the number of final and unexecuted orders of removal against citizens, subjects, nationals, and residents of that country; (3) the number of orders of removal executed against citizens, subjects, nationals, and residents of that country; and (4) such other factors as may serve the U.S. interest. See 8 CFR 214.2(h)(5)(i)(F)(1)(i) and 8 CFR 214.2(h)(6)(i)(E)(1).

In December 2008, DHS published in the **Federal Register** two notices, "Identification of Foreign Countries Whose Nationals Are Eligible to Participate in the H-2A Visa Program," and "Identification of Foreign Countries Whose Nationals Are Eligible to Participate in the H-2B Visa Program," which designated 28 countries whose nationals are eligible to participate in the H-2A and H-2B programs. See 73 FR 77,043 (Dec. 18, 2008); 73 FR 77,729 (Dec. 19, 2008). The notices ceased to have effect on January 17, 2010 and January 18, 2010, respectively. See 8 CFR 214.2(h)(5)(i)(F)(2) and 8 CFR 214.2(h)(6)(i)(E)(3).

To allow for the continued operation of the H-2A and H-2B programs, the Secretary of Homeland Security published, with the concurrence of the Secretary of State, a notice in the **Federal Register** on January 19, 2010, "Identification of Foreign Countries Whose Nationals

Are Eligible to Participate in the H-2A and H-2B Programs.” The notice provided for the continued eligibility of the 28 countries initially listed in the **Federal Register** notices of December 18 and December 19, 2008, and added 11 additional countries. See 75 FR 2,879 (Jan. 19, 2010). A notice in the **Federal Register** on January 18, 2011, “Identification of Foreign Countries Whose Nationals Are Eligible to Participate in the H-2A and H-2B Programs,” provided for the continued eligibility of 38 of the countries listed in the 2010 notice, removed Indonesia from the list, as Indonesia was not meeting the standards set forth in the regulation, and added 15 countries. See 76 FR 2,915 (Jan. 18, 2011).

The Secretary of Homeland Security has determined, with the concurrence of the Secretary of State, that the 53 countries previously designated in the January 18, 2011 notice continue to meet the standards identified in that notice for eligible countries and therefore should remain designated as countries whose nationals are eligible to participate in the H-2A and H-2B programs. Further, the Secretary of Homeland Security, with the concurrence of the Secretary of State, has determined that it is now appropriate to add five additional countries to the list of countries whose nationals are eligible to participate in the H-2A and H-2B programs. This determination is made taking into account the four factors identified above. The Secretary of Homeland Security also considered other pertinent factors including, but not limited to, evidence of past usage of the H-2A and H-2B programs by nationals of the countries to be added, as well as evidence relating to the economic impact on particular U.S. industries or regions resulting from the addition or continued non-inclusion of specific countries. In consideration of all of the above, this notice designates for the first time Haiti, Iceland, Montenegro, Spain, and Switzerland as countries whose nationals are eligible to participate in the H-2A and H-2B programs.

Designation of Countries Whose Nationals Are Eligible to Participate in the H-2A and H-2B Nonimmigrant Worker Programs

Pursuant to the authority provided to the Secretary of Homeland Security under sections 214(a)(1), and 215(a)(1) and 241 of the Immigration and Nationality Act (8 U.S.C. 1184(a)(1), 1185(a)(1), and 1231), I have designated, with the concurrence of the Secretary of State, that nationals from the following countries are eligible to participate in the H-2A and H-2B nonimmigrant worker programs:

Argentina

Australia

Barbados

Belize

Brazil

Bulgaria

Canada

Chile

Costa Rica

Croatia

Dominican Republic

Ecuador

El Salvador

Estonia

Ethiopia

Fiji

Guatemala
Haiti
Honduras
Hungary
Iceland
Ireland
Israel
Jamaica
Japan
Kiribati
Latvia
Lithuania
Macedonia
Mexico
Moldova
Montenegro
Nauru
The Netherlands
Nicaragua
New Zealand
Norway
Papua New Guinea
Peru

Philippines
Poland
Romania
Samoa
Serbia
Slovakia
Slovenia
Solomon Islands
South Africa
South Korea
Spain
Switzerland
Tonga
Turkey
Tuvalu
Ukraine
United Kingdom
Uruguay
Vanuatu

This notice does not affect the status of aliens who currently hold valid H-2A or H-2B nonimmigrant status. Persons currently holding such status, however, will be affected by this notice at the time they seek an extension of stay in H-2 classification, or a change of status from

another non-immigrant status to H-2 status, or a change of status from H-2A to H-2B (and vice-versa).

Nothing in this notice limits the authority of the Secretary of Homeland Security or her designee or any other federal agency to invoke against any foreign country or its nationals any other remedy, penalty, or enforcement action available by law.

Janet Napolitano,
Secretary.

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